IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

MFA. No. 623 of 2003()

WCC.246/1999 of W.C.C.,THRISSUR
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APPELLANT: APPLICANT:

SIDHARTHAN, S/O. UNNICHEKKAN,
THEKOOTTU HOUSE, ARIMPUR P.O., THRISSUR.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENTS: OPPOSITE PARTIES:
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1. AJITHKUMAR, S/O. BALAN,
THULUVAN HOUSE, AMALANAGAR P.O., THRISSUR.

2. THE NEW INDIA ASSURANCE CO. LTD.,
ANUGRAHA BUILDINGS, WADAKKANCHERY ROAD,
KUNNAMKULAM.

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 16/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & M.N. KRISHNAN, JJ.

M.F.A. No 623 of 2003

Dated: 16 th January 2007

JUDGMENT

Krishnan,J.

This appeal is preferred against the order of the Deputy Labour Commissioner for Workmen's Compensation in W.C.C. No 246 of 1999. Claimant sustained injuries in a road accident and the Commissioner fixed the loss of earning capacity at 40% and awarded compensation of Rs 1,03,336/- with 12% interest. It is against that decision claimant has come up in appeal.

2. A perusal of the order would reveal that the claimant had sustained fracture of the bones of the leg and he was treated as inpatient in the hospital and surgery was also done and the permanent partial disability was assessed at 18%. It was also stated that it will affect his earning capacity to the tune of 50%. Though application for sending him to the Medical Board was filed it was strongly opposed by the applicant and the Commissioner had analysed all the materials, fixed the percentage of disability at 40%

and calculated the compensation after taking proper index. The only question to be considered is whether the Commissioner has erred in fixing the disability at 40%. A perusal of the disability certificate would show that there is some limitation of movement and shortening of right lower limb and he had also developed post traumatic osteoarthritis on account of the disability. So the working capacity would not be reduced to an extent of 50% and that is why the Tribunal after considering the entire materials fixed it at 40%. We do not find any reason to hold that it is incorrect. Tribunal has also taken the monthly income as Rs 2,000/- which is allowable under the Workmen's Compensation Act and applied the proper index to find out the compensation. There is no infirmity and therefore the appeal lacks merits and it is accordingly dismissed.

SD/-
(K.S. RADHAKRISHNAN, JUDGE)

SD/-
(M.N. KRISHNAN, JUDGE)

16/01/2007
en/

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